

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS EYE & EAR INFIRMARY,)

Plaintiff,)

vs.)

Case No. 1:05-cv-11229

EUGENE B. CASEY FOUNDATION and)

THOMAS F. REILLY, as he is the Attorney General)

of The Commonwealth of Massachusetts,)

Defendants.)

EUGENE B. CASEY FOUNDATION'S MOTION TO DISMISS

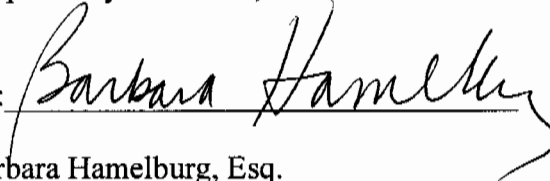
The Eugene B. Casey Foundation hereby moves to dismiss the Complaint filed by the Massachusetts Eye and Ear Infirmary, removed to this Court on June 11, 2005. Count I of the Complaint should be dismissed pursuant to the Court's discretion to decline to hear a claim under the Declaratory Judgment Act. Count II of the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. A Memorandum of Reasons in Support of the Foundation's Motion to Dismiss is being filed together with this Motion.

Request for Oral Argument

The Foundation requests that this Motion be set for Oral Argument pursuant to Local Rule 7.1(d).

Dated: June 22, 2005.

Respectfully submitted,

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BY CERTIFY THAT A TRUE COPY OF THE ABOVE
DOCUMENT WAS SERVED UPON THE ATTORNEY OF
RECORD FOR EACH OTHER PARTY BY MAIL-HAND ON

6/22/05 D2 E. WJ.